

STEIN, J.
PART IUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESENT: Hon. _____, J.S.C.

~~SUPREME COURT OF THE STATE OF NEW YORK~~
~~COUNTY OF NEW YORK~~Patriarch Partners XV, LLC and
Octaluna LLC,

Plaintiffs,

v.

U.S. Bank National Association and
MBIA Insurance Corporation,

Defendants.

At AS Part ____ of the Supreme Court of the
State of New York, held at the County
Courthouse, 60 Centre Street, New York,
New York, on the ____ of September, 2016.USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/15/16

CASE No. 1:16-cv-07218

Index No. 654819 /2016

~~AS Part~~~~Justice~~

ORDER TO SHOW CAUSE

The Court having considered the Summons and Verified Complaint in this action, to be utilized as an Affidavit pursuant to CPLR 105(u); the Affirmation of Mark A. Kirsch, dated September 12, 2016, and exhibits annexed thereto; the Affidavit of John H. Reohr IV, and exhibits annexed thereto; the Affidavit of Steven L. Schwarcz, and exhibits annexed thereto; and the memorandum of law of Plaintiffs Patriarch Partners XV, LLC and Octaluna LLC (collectively, "Plaintiffs") in support of their application by order to show cause for a temporary restraining order and preliminary injunction in respect of a proposed September 15, 2016 sale by the Trustee (the "Proposed Sale") of collateral (the "Collateral") held by the Trustee on behalf of non-parties Zohar CDO 2003-1, Limited, Zohar CDO 2003-1, Corp., and/or Zohar 2003-1, LLC

argument during been had on the record in Ct on 23A on September 13, 2016,

(collectively, "Zohar I"); and having found sufficient reason alleged and good cause appearing therefore, it is hereby:

ORDERED that Defendants U.S. Bank National Association ("U.S. Bank" or the

"Trustee") and MBIA Insurance Corporation ("MBIA") (collectively, "Defendants"), or

✓ Defendants' attorneys, show cause before ~~this Court~~ ^{the} ~~at IAS Part~~ ^{United States} ~~of the Supreme Court of~~
~~District Court For The Southern District of New York~~
~~the State of New York~~, County of New York, located at ~~60 Centre Street~~, New York, New York,

✓ 10007, on the 6 day of October, 2016 at 10: A ^{500 Pearl Street} .m., or as soon thereafter as counsel can

be heard, why an order should not be issued, pursuant to ~~CPLR §§ 6301, 6313, 3101(a), 3102(b),~~

~~3106(a), 3107, and 3120.~~

- a. Granting Plaintiffs a preliminarily injunction, pending trial and determination of Plaintiffs' application for a permanent injunction, enjoining and restraining Defendants, their agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them, from (i) proceeding in any way with and/or consummating the Trustee's Proposed Sale of the Collateral; (ii) directing and/or instructing any person (including but not limited to any liquidation agent appointed by the Trustee) to proceed in any way with and/or consummate the Trustee's Proposed Sale of the Collateral; (iii) proceeding in any way with and/or consummating any future proposed sale of the Collateral or any part thereof; or (iv) directing and/or instructing any person to proceed in any way with and/or consummate any future proposed sale of the Collateral;
- b. Compelling the Trustee to provide Plaintiffs with all books and records concerning the Proposed Sale and any related marketing efforts;

- c. Granting Plaintiffs expedited discovery in connection with their preliminary injunction application in advance of any hearing on that application; and
- d. Granting Plaintiffs such other relief as this Court deems just and proper;

and it is further

ORDERED that, pending the hearing and determination of Plaintiffs' application for a preliminary injunction, Defendants, their agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them are temporarily enjoined and restrained from (i) proceeding in any way with and/or consummating the Trustee's Proposed Sale of the Collateral; (ii) directing and/or instructing any person (including but not limited to any liquidation agent appointed by the Trustee) to proceed in any way with and/or consummate the Trustee's Proposed Sale of the Collateral; (iii) proceeding in any way with and/or consummating any future proposed sale of the Collateral or any part thereof; or (iv) directing and/or instructing any person to proceed in any way with and/or consummate any future proposed sale of the Collateral or any part thereof; and it is further

~~ORDERED that, pursuant to CPLR §§ 3101(a), 3102(b), 3106(a), 3107, and 3120,~~ (K/S)
~~Plaintiff shall be permitted to serve requests for production of documents (in the form attached hereto as Exhibits 1 and 2), and to notice the deposition of one representative of each Defendant, upon entry of this Order, and that Defendants shall produce all documents responsive to Plaintiffs' requests no later than fourteen days prior to the date set forth below for oral argument on Plaintiffs' application for a preliminary injunction (the "Oral Argument Date"), and shall produce their representatives for deposition within seven days prior to the Oral Argument Date;~~
and it is further

ORDERED that service upon Defendants of a copy of this Order to Show Cause, together with the papers upon which it was granted, along with the Summons and Verified Complaint, by hand, facsimile, or electronic mail on or before 5:00 p.m. on the 14 day of September, 2016, shall be deemed good and sufficient service thereof; and it is further

ORDERED that answering and responsive papers, if any, shall be served by hand or by electronic mail on Mark A. Kirsch, of the law firm Gibson, Dunn & Crutcher LLP, 200 Park

Avenue, New York, New York, 10166, counsel for Plaintiffs, on or before 12:00 Noon on the 27 day of September, 2016; and it is further

ORDERED that reply papers, if any, be served upon Defendants, or their attorneys, if any, by hand or email delivery on or before the 27 day of September, 2016; and it is further

ORDERED that oral argument is directed on Plaintiffs' application for a preliminary injunction on the _____ day of _____, 2015 at _____ m., or as soon thereafter as counsel may be heard.

SECURITY WILL BE POSTED IN THE AMOUNT

OF \$ 250,000.

BY: 12:00 Noon on Sept 15

ENTERED:

9/14/16

U.S. D. J.
PART I

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